

EXHIBIT 5



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

VESID, Special Education Quality Assurance, New York City Regional Office
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January 13, 2009

Ms. Linda Wernikoff
Executive Director
New York City Department of Education
Teaching & Learning Special Education Initiatives
52 Chambers Street, Room 220
New York, New York 10007

Dear Ms. Wernikoff:

On November 12, 2008, the State Education Department (SED) received a State complaint from Partnership for Children's Rights and Legal Services New York City, Bronx, against the New York City Department of Education (DOE) regarding its practices of requiring parents to submit completed W-9 forms, preparing and issuing of 1099-MISC forms to parents and filing information returns with the Internal Revenue Service (IRS) for the parents on the tuition reimbursements they receive from impartial hearing decisions or settlements. The complaint alleges that the district has violated federal and State law and regulation pertaining to the education of students with disabilities, ages three to twenty-one.

The DOE has indicated to the State Education Department (SED) that the above mentioned practices are part of the district's policies and procedures and that DOE is mandated by the City Comptrollers Office to follow these requirements. The DOE is violating the Individuals with Disabilities Education Act (IDEA) federal law and regulation (Section 300.148) which affect enrollment of children with disabilities by their parents in private schools when a free appropriate public education (FAPE) is an issue. In addition, according to the IRS, it is their long-standing position that in a nonemployment context, reimbursements for expenses incurred by a taxpayer on behalf of another are not includible in the taxpayer's gross income and not subject to information reporting if the payments are made directly to the parent. Therefore, taxable income does not include reimbursement from a school district for the cost of tuition or services for which the district is obligated to pay on behalf of disabled special education students.

As a result, DOE must immediately discontinue the practices of:

- requiring parents to complete and submit W-9 forms to the DOE;
- issuing 1099-MISC forms to parents;
- filing information returns with the IRS reporting the reimbursement payments as taxable "miscellaneous income".



The DOE is required to revise its policy and procedures to indicate that the practices are not a requirement for tuition reimbursements parents receive from impartial hearing decisions. In addition, the DOE must notify parents who filed during the 2007 and 2008 tax years and received and/or were requested to submit the above mentioned forms as a result of an impartial hearing decision that these forms are not required in order to receive tuition reimbursement and that the parent may wish to file an amended tax return. Copies of the letters sent to parents and the revised policy and procedures must be submitted to SED by February 15, 2009.

If you have any questions or concerns, please call me at the number listed above.

Sincerely,


Patricia Shubert

PS:da

c: Rebecca Cort
James DeLorenzo
Patricia Geary
Michael Hampden
Nelson Mar
File